



October 4, 1999

Mr. Gregory T. Simpson
Director, Administrative Law Section
Legal Services Division
General Land Office
1700 North Congress Avenue
Austin, Texas 78701-1495

OR99-2811

Dear Mr. Simpson:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 127926.

The General Land Office (the "GLO") received a request for "a complete copy" of two categories of information "in connection with the bid process and award" of a specified property. You state that "[t]he GLO has no documents responsive to request number two." In response to the request, you submit to this office for review the information responsive to the first category of the request. You claim that the submitted information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception and arguments you raise, and have reviewed the information submitted.¹

Section 552.103(a), the "litigation exception" excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a

¹You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

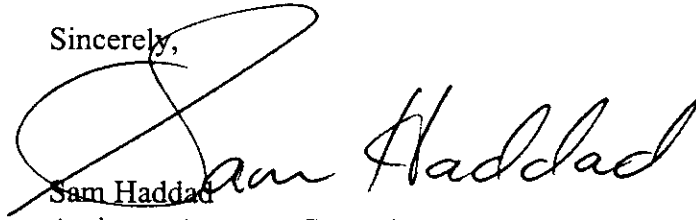
The GLO has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The GLO must meet both prongs of this test for information to be excepted under section 552.103(a). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the GLO must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

In this instance, you state that the requested records are related to "a declaratory judgment action [filed] on November 13, 1998, styled *El Paso Community Partners, A Texas General Partnership v. The Permanent School Fund of the State of Texas and B&G Sunrise Joint Venture*." You state that the "lawsuit was dismissed with prejudice by the Court on June 2, 1999;" however, a "Motion for New Trial" was filed on July 1, 1999. You have supplemented your brief with a copy of the "Notice of Appeal," in support of your litigation claim under section 552.103. See Open Records Decision No. 638 (1996). Based on your arguments and the submitted records, we conclude that litigation is pending. We also conclude that the information submitted by the GLO is related to the litigation for the purposes of section 552.103(a). Therefore, the information at issue may be withheld pursuant to section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 127926

Encl: Submitted documents

cc: Mr. Francis S. Ainsa, Jr.
AINSA Partners
5809 Acacia Circle
El Paso, Texas 79912
(w/o enclosures)